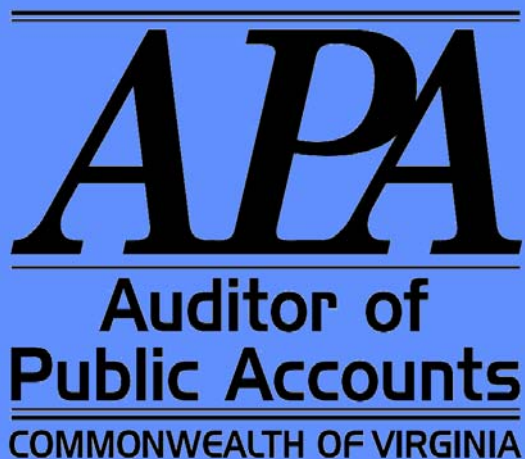


**OFFICE OF THE ATTORNEY GENERAL  
AND  
THE DEPARTMENT OF LAW**

**REPORT ON AUDIT  
FOR THE YEAR ENDED  
JUNE 30, 2008**



## **AUDIT SUMMARY**

Our audit of the Office of the Attorney General and the Department of Law and the Division of Debt Collection found:

- proper recording and reporting of all transactions, in all material respects, in the Commonwealth Accounting and Reporting System; and
- no matters involving internal control and its operations necessary to bring to management's attention
- no instances of noncompliance with applicable laws and regulations or other matters that are required to be reported.

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## AGENCY HIGHLIGHTS

The Attorney General is the chief executive officer of the Commonwealth of Virginia's Department of Law. The Attorney General and Department of Law, "Office of the Attorney General", acts as the Commonwealth's law firm. The Attorney General and his staff represent the Commonwealth's interests in all civil cases naming the Commonwealth, or any of its agencies or officials, as a party, and in criminal cases on appeal to the Court of Appeals of Virginia and the Supreme Court of Virginia. In cases involving federal law, the Attorney General represents the Commonwealth's interests in federal court. The Office also enforces consumer protection laws and investigates Medicaid fraud.

The Attorney General is also the legal advisor to the Governor and more than 200 state agencies, boards, commissions, and institutions. The Attorney General renders official opinions on the application of the law upon written request of the Governor, members of the General Assembly, members of the judiciary, state officials, or local constitutional officers. The Office defends criminal convictions on appeal, and defends the state when prisoners sue concerning their incarceration. In addition, the Office defends legal challenges of the constitutionality of state laws, and supervises the appointment and payment of private attorneys hired by other state agencies for various matters. The Office also administers grants to help reduce crimes involving gangs, drugs, and sex predators.

The Office's organizational structure is similar to a private law firm, with divisions devoted to legal specialties. The Office has six legal divisions with offices in Abingdon, Fairfax, Norfolk, Richmond, and Roanoke. A Deputy Attorney General heads each division and reports directly to the Chief Deputy Attorney General, an appointee of the Attorney General. The Administration Division provides finance, human resources, information systems, and operations support to the legal divisions. The following are the legal divisions.

*Civil Litigation Division* – This division includes four sections: Antitrust and Consumer Litigation, Trial, Construction Litigation, and Insurance and Utilities Regulation.

*Financial Law and Government Support Division* - This division provides legal services to various financial agencies and boards of the Commonwealth within the Secretaries of Finance, Commerce and Trade, Public Safety, and Agriculture and Forestry. In addition, the division serves as the Commonwealth's counsel on bond issues involving land.

*Public Safety & Enforcement Division* - This division includes the Health Care Fraud and Professional Integrity Special Prosecutions Section that includes the Medicaid Fraud Control Unit. The division also includes the Correctional and Criminal Litigation Sections. We have included a separate section in this report to discuss the activities of the Medicaid Fraud Control Unit.

*Health, Education, and Social Services Division* - This division includes the Education Section, Health Services Section, the Division of Child Support Enforcement, and Medicaid and Social Services Section.

Technology, Real Estate, Environment and Transportation Division - This division includes the Technology and Procurement Section, the Computer Crimes Section, the Real Estate and Land Use Section, the Environmental Section, and the Transportation Section.

Sexual Predators, Tobacco, Alcohol and Gaming (STAG) Division and Division of Debt Collections - This division handles all cases related to Sexual Predators, Alcohol, Tobacco, and Gaming, and includes the Division of Debt Collection.

The Division of Debt Collection is a separate agency within the Office. It provides legal services and advice related to the collection of funds owed to the Commonwealth. The following financial information presents separate information on the Office of the Attorney General and the Division of Debt Collection.

#### Attorney General's Office

The Office receives about two thirds of its funding from the General Fund with the remaining funding coming almost equally from special revenue and federal funds. The special revenue funds are primarily from fees charged to agencies and universities for legal services provided by the Office. State law permits the Attorney General to bill agencies for the legal services, if the agency receives all or a part of its funding from non-general funds. The Office also receives federal grants supporting Medicaid fraud control activities and programs to suppress gang activity.

The Office's activities are budgeted in three programs, the largest of which is the Legal Advice program. Attorneys in the Legal Advice program provide legal services to state agencies. The following schedules compare the Office's original and final budgets by program with actual expenses for fiscal years 2008 and 2007.

#### 2008 Budgeted and Actual Expenses

<u>Program</u>	<u>Original Budget</u>	<u>Final Budget</u>	<u>Expenses</u>
Legal advice	\$27,089,676	\$29,388,738	\$27,560,804
Medical assistance services	4,077,799	4,696,755	4,346,233
Regulation of business practices	<u>2,115,481</u>	<u>2,137,667</u>	<u>2,115,774</u>
Total	<u>\$33,282,956</u>	<u>\$36,223,160</u>	<u>\$34,022,810</u>

#### 2007 Budgeted and Actual Expenses

<u>Program</u>	<u>Original Budget</u>	<u>Final Budget</u>	<u>Expenses</u>
Legal advice	\$24,839,052	\$28,060,195	\$25,566,878
Medical assistance services	4,077,799	4,182,198	3,506,906
Regulation of business practices	<u>2,115,481</u>	<u>2,146,360</u>	<u>2,107,727</u>
Total	<u>\$31,032,332</u>	<u>\$34,388,753</u>	<u>\$31,181,511</u>

Overall, the Office's fiscal year 2008 budget increased about \$2 million from 2007. This increase was due to a \$1.9 million increase in federal funding for grants. Also, there was additional legal staff added for the sexually violent predator program.

#### Medicaid Fraud Control Unit

The Virginia Medicaid Fraud Control Unit (MFCU) investigates and prosecutes health care provider insurance fraud against the federally funded Medicaid program. Federal regulations require the Office establish the MFCU as a separate and distinct entity from the Department of Medical Assistance Services, the state agency that administers the Medicaid program. The U.S. Department of Health and Human Services has certified the MFCU and it is one of 50 similar state units in the United States. Federal law has expanded the scope of the MFCU to include any state and federal healthcare programs including Medicare, CHAMPUS, and others, in addition to Medicaid.

Federal grants fund the MFCU operations and requires a 25 percent match of General Funds. The MFCU employs a professional staff of approximately 43 criminal investigators, auditors, and several Assistant Attorneys General who are experienced in commercial and financial investigations. MFCU has a criminal and a civil unit.

The civil unit formed in fiscal year 2006, and investigates whistle blower cases jointly with the National Association of Medicaid Fraud Control Units. The civil unit also investigates false claims cases brought by the federal government. The majority of the civil cases relate to pharmaceutical company frauds.

The table below shows the total amount of MFCU recoveries as ordered by the courts (fines, penalties, or restitutions). Because the Virginia Medicaid program is 50 percent federally funded and 50 percent state-funded, Virginia receives half of Medicaid recoveries. All recoveries go into the Virginia Health Care Fund established by the General Assembly in 2004 and must support health care services.

#### **MFCU Recoveries by Year**

<u>Fiscal Year</u>	<u>Total Recoveries</u>
2000	\$ 1,480,345
2001	37,612
2002	12,081,532
2003	11,848,871
2004	14,358,790
2005	10,578,111
2006	9,071,737
2007	117,704,812
2008	541,099,617

*Source: Medicaid Fraud Case Tracking System*

There was a large increase in recoveries in fiscal year 2007 and 2008 due to a significant settlement in the Purdue Oxycontin criminal case. The total recoveries from all the defendants in the case were \$634,500,000, which several states shared. The Commonwealth's recovery was \$105 million of the \$634.5 million, which went to several state agencies and the settlement restricts how the agencies may use these funds. The following agencies received funds under this settlement:

Virginia State Police	\$44 million
MFCU	\$39.8 million
Department of Health Professions	\$20 million
Department of Medical Assistance Services	\$1.2 million

### Division of Debt Collection

The Division of Debt Collection (Division) is a separate agency within the Office. It collects delinquent accounts for state agencies, state-supported institutions of higher education, and their hospitals. The Division receives delinquent accounts from state agencies and takes appropriate action, including litigation, to collect them.

The 2004 General Assembly passed legislation requiring agencies to forward past due accounts over \$3,000 and 60 days old to the Division. This 2004 legislation also mandated that collections be split among the creditor agency, the General Fund, and the Division to fund operations. The General Assembly removed the General Fund Allocation in 2008, and collections currently are split between the creditor agency and the Division.

From 2002 through 2005, the Division received budget and staffing level increases to keep up with a growing caseload. In fiscal year 2007, the dollar value of active accounts fell \$28.2 million when the Division collected \$1.2 million from a single debtor and placed the remaining \$23 million of the claim in an inactive status. The following table shows selected operating statistics for the last five years for the Division.

#### **Division Operating Statistics for 2003-2008**

	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
Maximum employment level	17	21	23	23	24	24
Division budget	\$1,126,706	\$1,361,076	\$1,516,385	\$1,578,689	\$1,665,104	\$1,663,972
Number of accounts	6,322	8,312	11,140	9,689	10,397	10,774
Active accounts (\$ in millions)	\$91	\$100	\$159	\$157	\$132	\$141
Gross collections (\$ in millions)	\$13	\$ 13	\$10	\$12.5	\$11.5	\$9.7
Amount returned to the General Fund (\$ in millions)	\$ -	\$1.5	\$1.4	\$ 1.1	\$ 0.5	\$ -

*Source: Commonwealth Accounting and Reporting System and the Division of Debt Collection*

The Division funds operations with a portion of fees retained from their collections. Over the last several years, the Division has consistently retained fees in excess of their operating expenses resulting in a significant cash balance. The General Assembly added language to Chapter 847 of the Appropriation Act to allow the Division to keep \$400,000 in operating capital with any excess being transferred to the General Fund by September 1 of each year. The Division can request to keep more of the balance, but the Department of Planning and Budget must approve this. The following table details the Division's operating revenues and expenses for the last 5 fiscal years.

**Revenues and Expenses – Fiscal Years 2004 – 2008**

	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
Beginning balance	\$ 1,352,947	\$2,278,366	\$2,689,193	\$2,715,318	\$3,251,193
Collection fee revenue	1,964,690	1,705,269	1,555,866	2,152,384	1,899,182
Expenses	(1,024,534)	(1,285,932)	(1,521,073)	(1,616,509)	(1,699,332)
Transfers	<u>(14,737)</u>	<u>(8,510)</u>	<u>(8,668)</u>	<u>-</u>	<u>(1,601,192)</u>
Ending balance	<u>\$ 2,278,366</u>	<u>\$2,689,193</u>	<u>\$2,715,318</u>	<u>\$3,251,193</u>	<u>\$1,849,860</u>

At the end of fiscal year 2007, the Division had a cash balance of over \$3.2 million. Aside from the \$400,000 in operating capital, Planning and Budget allowed the Division to keep an additional \$1.2 million for additional working capital and funds to purchase a new case management system. As a result, the Division transferred \$1.6 million to the General Fund in October 2007.

At the end of fiscal year 2008, the Division had a cash balance of over \$1.8 million. The Division requested to keep \$1 million in addition to the \$400,000 in working capital, but Planning and Budget did not approve this request. Planning and Budget did allow the Division to keep \$350,000 for a new case management system resulting in a \$1.1 million transfer back to the General Fund in August 2008.





# Commonwealth of Virginia

**Walter J. Kucharski, Auditor**

**Auditor of Public Accounts  
P.O. Box 1295  
Richmond, Virginia 23218**

September 12, 2008

The Honorable Timothy M. Kaine  
Governor of Virginia  
State Capital  
Richmond, Virginia

The Honorable M. Kirkland Cox  
Chairman, Joint Legislative Audit  
and Review Commission  
General Assembly Building  
Richmond, Virginia

We have audited the financial records and operations of the **Office of the Attorney General and Department of Law and Division of Debt Collection** for the year ended June 30, 2008. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## Audit Objectives

Our audit's primary objectives were to evaluate the accuracy of recorded financial transactions on the Commonwealth Accounting and Reporting System, review the adequacy of the agencies' internal controls, test compliance with applicable laws and regulations and review corrective actions of audit findings from prior year reports.

## Audit Scope and Methodology

The Office of the Attorney General and the Division of Debt Collection's management has responsibility for establishing and maintaining internal control and complying with applicable laws and regulations. Internal control is a process designed to provide reasonable, but not absolute, assurance regarding the reliability of financial reporting, effectiveness and efficiency of operations, and compliance with applicable laws and regulations.

We gained an understanding of the overall internal controls, automated and manual, sufficient to plan the audit. We considered materiality and control risk in determining the nature and extent of our audit procedures. Our review encompassed controls over the following significant cycles, classes of transactions, and account balances.

Expenses, including payroll  
Revenue collections and distributions  
Appropriations  
General controls over information systems

We performed audit tests to determine whether the Office of Attorney General and the Division of Debt Collection's controls were adequate, had been placed in operation, and were being followed. Our audit also included tests of compliance with provisions of applicable laws and regulations. Our audit procedures included inquiries of appropriate personnel; inspection of documents, records, including vouchers, reconciliations, deposit certificates, billings, creditor agency collections and distributions, receipts from recoveries, and audit adjustments; and observation of the operations. We reviewed the applicable sections of the Code of Virginia and the 2008 Acts of Assembly. We tested transactions and performed analytical procedures, including budgetary and trend analysis.

### Conclusions

We found that the Office of the Attorney General and the Department of Law and the Division of Debt Collection properly stated, in all material respects, the amounts recorded and reported in the Commonwealth Accounting and Reporting System. The Commonwealth Accounting and Reporting System's records its financial transactions on the cash basis of accounting, which is a comprehensive basis of accounting other than accounting principles generally accepted in the United States of America. The financial information presented in this report came directly from the Commonwealth Accounting and Reporting.

We noted no matters involving internal control and its operation that we consider necessary to be reported to management. The results of our tests of compliance with applicable laws and regulations disclosed no instances of noncompliance or other matters that are required to be reported under Government Auditing Standards.

The Office has taken adequate corrective action with respect to the audit finding reported in the prior year.

### Exit Conference and Report Distribution

We discussed this report with management on September 30, 2008.

This report is intended for the information and use of the Governor and General Assembly, management, and the citizens of the Commonwealth of Virginia and is a public record.



AUDITOR OF PUBLIC ACCOUNTS

OFFICE OF THE ATTORNEY GENERAL

As of June 30, 2008

Robert F. McDonnell  
Attorney General

William C. Mims  
Chief Deputy Attorney General

J. Jasen Eige  
Chief of Staff and Counsel

Thomas A. Gelozin  
Director of Finance